1949.

File No. Pri Edn Bom II/49
Legal Department (R)

K

B BRANCH

Subject:—

PIME Rules under the
Bombay Primary Education
Act 1947

File No. Pri. Edn. Bom II/49 (R).

Gen. 194

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Legal Department.

Rule 9 of the draft Primary Education Rules.-

Sub-section (15) of section 4 of the Bombay Primary Education Act, 1947, lays down that casual vacancies including that of Chairman or Vice-chairman during the term of a school board shall be filled up for the remaining period by election etc. Under sub-section (1) of that section each school board must consist of at least twelve members. In view of these provisions it appears that the proviso proposed to be added to the draft rule 9 would not be intra vires. It will be necessary to amend the Act on the lines of section 33 of the Bombay Local Boards Act and section 89 of the Bombay Local Municipal Boroughs Act. When the amendment of this Act will be undertaken, opportunity should also be taken to provide that in the event of a vacancy occurring the remaining members may continue to act, as if the vacancy had not occured on the lines of section 87 of the Bombay Municipal Boroughs Act.

Sub-rule (2) of rule 9 proposed by the Department may be as follows, after renumbering present rule 9 as sub-rule (1) of that rule, namely,

"(2) The vacancy of a member of a school Board appointed or nominated by Government due to any cause shall be forthwith reported to Government by the Administrative Officer of the School Board."

Draft rule 16.- The revised rule may be as follows, namely:-

"16. Notice for calling a meeting. (1) All members of a District School Board shall be given 10 clear days notice of an ordinary meeting and 5 clear day's notice of a special meeting of the School Board.

(2) All members of a Municipal School Board shall be given 5 clear days notice of an ordinary meeting and 3 clear days notice of a special meeting of the School Board.

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(3) Every notice under sub-rule (1) or (2) shall also be posted up at the School Board Office. Such notification shall specify the place of meeting and business to be transacted thereat and in the case of a special meeting any motion or proportion mentioned in the request for calling such a meeting shall also be specified

Draft rule 39.- The words Municipal School Board" may be substituted for the words"Administrative Officer" as proposed by the Department.

Draft rule 41.- The amendment proposed by the Department is in order.

Draft rule 48.- The words "in which case the Vice-Chairman shall act in his behalf" in clause (d) are not ultra vires. They are covered by section 63(2) (b). (cf. draft rule 50(c) also). The said words may therefore be retained.

Draft rule 61.- For the purpose in view, to clause(g) of sub-rule(1) the words"subject to any directions given by the Chairman may be added.

Draft rule.-154.- Under sub-section (1) of section 20 every authorised municipality is required to maintain an adequate staff of primary school teachers as may in the opinion of Government be necessary. Under sub-section (3) of that section the rates of the pay and allowances and terms of employment of the primary school teachers are to be fixed by Government. Note below draft rule 154(1) lays down that the municipal school board while preparing the budget shall make necessary provision for the pay and allowance of the primary school teachers and their substitutes. The provision contained in the proviso to draft rule 154(2) that the said provision contained in budget shall not be subject to the vote of the authorised municipality isnecessary for carrying out the purpose of section 20 and would be intra vires. It may therefore be retained.

Draft rule 202.- The rule as drafted already provides for rescission etc. in individual cases or class of cases and does not require any amendment.

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Addl

Additional Secretary to government

U.R. to C & I.D. No 2316 dt. 26th Feb. 1949.

Legal Department.

It is unnecessary to publish again all the amendments proposed to be made in the draft rules for inviting objection and suggestions. Only the amendments which affect prejudicially any right or interest or extends the operation of the proposed Rules or make them more stringent require republication. Accordingly in place of the E.& I.D. draft notification at p.5. to 28 a revised draft notification is sent herewith, containing only those amendments which require republication and other amendments are examined below which may be carried out at the time of the final publication of the proposed rules.

Draft rule1.- In the short title, for the figures "1948" the figures "1949" may be substituted. Similar change will have to be made in the Schedules etc.

Draft rule 2.- The amendment proposed by the Deptt. at p.5 ante is in order.

Draft rule 5.- The amendments proposed by the Department at pages 6-7 are in order.

Draft rule 6.- The proposed amendment has already been approved by this Deptt.

Draft rule 8.- The amendment proposed by the Deptt. in in order.

Draft rule 9.- For the reason s given in this Deptt. U.R. No. 2316, dated 26th Feb. 1949 the proviso proposed to be added to sub-rule (2) may be as suggested in the said U.R. dated 26th Feb 1949.

Draft 12.- There appears no legal objection to adding a proviso as proposed by the Deptt.

Draft rule 16.- The Revised draft rule furnished with this Deptt. U.R. dt- 23.2.40 may be substituted.

Draft rule 19.- The amendment proposed at p.9 is in order.

Draft rule 20.- The proposed amendment is in order.

Draft rule 28.- In the proposed revised sub-rule (1) in the last sentence the word"also " may be deleted and in sub-rule(2) in the first line after the word"shall" the word "also" may be inserted.

Draft rule 30.- The amendments proposed at p.10-11 are in order.

Draft rule 32.- The proposed amendments are in order.

Draft rule 36.- The proposed amendment is in order.

Draft rule 37.- The proposed amendment appears to require republication and has been included in the draft notifiction sent herewith in revised form.

Draft rule 38,- The amendment proposed at p-12 is in order.

Draft rule 39,- The first amendment is in order.

As regards the second amendment the expression used in section 20 and other sections of the Act is "inferior servants". The expression used in the Act should be retained in the rules.

Draft rule 40.- The proposed amendment is in order.

Draft rule 41.- The proposed amendment is in order. Please see the D.P.I's letter at p.7 at p.25 of filealiped X. The proviso to rule 41 is not ultra vires and may be retained. Although the Administrative Officer is empowered under section 24 to take disciplinary action against the staff maintained under section 20. The power to appoint the staff vests in the D.B.B. or the authorised Municipality and the staff will be the servants of the Board or the Municipality. As the case may be. It is statutiry duty of those bodies to maintain adequate staff. The proviso which authorises the Board or the Municipality to re-instate a member of the staff in suitable cases therefor be legally in order.

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Draft rule 68.- The amendments proposed at p.18 are in order.

Draft rule 69.- The proposed amendments are in order.

Draft rule 70.- The proposed amendment is in order.

Draft rule 76.- The proposed amendment is in order.

Draft rule 115.- The proposed amendment is in order.

Draft rule 117.- The proposed amendment is in order.

Draft rule 122.- The proposed amendment is inorder.

Draft rule 125.- Sub-rule (2) is not ultra vires It prescribe the minimum and maximum hours of instructions and is necessaryfor the purposes of section 36 and 39 Section 15(2) (g) is not relevant. It lays down an obligation on the district school board to obtain the approval of the Education Inspector in fixing the actual hours of instructions, subject to the provision of these rules. The amendment proposed by the Deptt. at p.19 is in order.

Draft rule 127.- The proposed amendments are in order.

Draft rule 132.- The proposed amendment is inorder.

Draft rule 140.- The proposed amendments are in order.

Draft rule 154.- For the reasons stated in this Deptt. U.R. dated 26.2.1949 the proviso to sub-rule (2) would be intra vires and may be retained.

Draft rule 156.- The proposed amendment is in order.

Draft rule 167.- Clause (i) is not ultra vires and as pointed out by theDepartment is covered by section 48(2).

Draft rule 182.- The proposed amendment is in order.

Draftt rule 183.- The proposed amendment is in order. The subsequent rules may be renumbered and cross referances corrected.

Draft rule 186.- The proposed amendant is in order. The marginal note may also be amended similarly.

Draft rule 200.- The proposed amendment is inorder.

~~Deft rule~~
Schedule A.- The proposed amendment requires republication and has been included in the accompanying notification

Draft rule 47.- In view of the remarks on draft rule 41 this rule also appears to be free from legal objection.

Draft rule 48.- As regards the first amendment proposed at p.13 as stated in this Deptt. U.O. dated 26th Feb. 1949 the words "in which case the vice Chairman shall act in this behalf" in clause (d) are not ultra vires and may be retained. The draft amendment proposed by the Deptt. at p-13 ante is in order.

Draft 55.- The revised draft rule proposed by the Deptt. at p. 14 is in order.

Draft rule 56.- The revised draft amendment is in order.

Draft rule 61.- (a) For clause (g) of sub.rule (1) in the words "subject to any directions given by the Chairman" may be added.

(b) The amendment proposed by the Deptt. is in order.

(c) In sub-rule(6) clause(iv) for the words "givingAdvice" to the words "assisting " may be substituted.

(d) The amendment proposed by the Deptt. is in order.

Draft rule 63.- (a) The expression "inferiorservants" may be retained in view of the remarks on rule 39.

(b) The amendments proposed by the Deptt. are in order.

There is no legal objection to retaining the word "reinstatement" in sub-rule (2) (d) in view of the remarks on rule 41.

Draft rule 65.- The amendment proposed at p-15 is in order.

Draft rule 67.- The revised draft rule appears to require re-publication and has been included in accompanying notification in slightly revised form

Schedule B.- The proposed amendments require rpublication and have been included in the notification.

Schedule C.- The proposed amendments are in order.

Schedule H.- The proposed amendments are in order.

Schedule M.- The proposed amendments are in order.

Appoindix -C.- The proposed amendments are in order.

~~S.D.~~ Sd

Additional Secretary to Government.

U.P. to E & IDept. No. 8718 dated 9th March 1940.

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Legal Department.

There is no legal objection to adding a proviso to draft rule 6(i) as suggested in paragraph 2 of the Education and Industries Department note of 21-1-1949 at page 15 ante. The proviso may be as follows, Namely:-

"provided that in the case of a district local board or authorised municipality the term of office of the members or councillors of which expires on or before the 31st July 1949, the election of the members of the School Board may not be held by the district local board or the authorised municipality concerned until after the new district local board or the authorised municipality, as the case may be has been constituted."

2. As the proposed amendment contains merely an enabling provision it can be incorporated in the rules to be finally published, and no separate previous publication is necessary.

Sd.

Additional Secretary to Government.

U.O. to E.& I.T.D. No. 1502, dated the 10th February 1949.

VGP.
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Bombay Primary Education Act, 1947

Instructions under section 23(4) of-

GOVERNMENT OF BOMBAY.
Education and Industries Department,
Resolution No.

Bombay Castle, May 1949.

RESOLUTION:- Under the powers conferred by sub-section (4) of section 23 of the Bombay Primary Education Act, 1947, Government is pleased to direct that the instructions to the Staff Selection committee for selecting candidates for appointment as Primary School teachers in Appendix A to Government Resolution Education and Industries Department, No. 7636, dated the 20th April 1949, should be amended as follows, namely :-

After instruction 8 of the said instructions the following new instruction shall be inserted, namely :-

"8A. Notwithstanding anything contained in instructions 1 and 3, the Administrative Officer may invite applications from and the Staff Selection Committee may interview and include in the panels of selected candidates, persons who had participated in the Civil Disobidience Movement of 1942 by giving up their studies notwithstanding their lack of theeducational qualifications prescribed, provided that such persons establish satisfactorily the fact of their participation had resulted in their not obtaining the prescribed qualifications".

By order of the Governor of Bombay.

Secretary to Government.

VDP.

5-6-50.

Legal Department.

A revised draft Government Resolution is sent herewith. Instead of merely issuing an instruction to the Staff Selection Committee as proposed by the Education and Industries Department it will also be necessary to instruct the Administrative Officer to entertain applications from the persons concerned. The object can be achieved by inserting a new instruction 8A rather than by amending instruction 8. The revised Government Resolution provides accordingly.

S./B:

Additional Secretary to Government.

U.R. to E.& I.D. No. 5798, dated the 24th May 1949.

VGP.
5-6-56.

NOTIFICATION.

Education and Industries Department.
Bombay Castle, August 1949.

Bombay Primary Education Act. 1947.

No. 7896 - The following draft of a notification which it is proposed to issue under section 63 of the Bombay Primary Education Act. 1947 (Bom LXI of 1947), is published as required by sub-section (3) of the said section 63 for the information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration by the Government of Bombay on or after the X 1949.

Date to be filled in by E.&I.D.

2. Any objections or suggestions which may be received by the Secretary to the Government of Bombay in the Education and Industries Department from any person with respect to the said draft on or before the date aforesaid will be considered by Government.

Draft Notification.

In exercise of the powers conferred by section 63 of the Bombay Primary Education Act, 1947 (Bom LXI of 1947), the Government of Bombay is pleased to amend the Bombay Primary Education Rules, 1949, as follows, namely :-

In the said rules, for sub-rule (1) of rule 132 of the following shall besubstituted, namely

(1) The name of any pupil - except a pupil attending a school himself without an area of compulsion absenting himself without leave for more than 15 days in a month or with leave for more than three consecutive months, shall be struck off the register."

By order of the Governor of Bombay.

Legal Department.

Sub-rule (1) of rule 17 of Chapter VII of the draft rules submitted by the D.P.I. referred to "approved schools", sub-rule (2) then mentioned "well established schools". The expression "well established schools" does not appear in the Bombay Primary Education Act 1947, or the draft rules submitted by the D.P.I. As it stands it has no meaning. It was assumed that sub-rule (2) of the draft referred to schools other than approved schools and the expression "wellestablishedschools" was, therefore, changed to "other private School." E. and I.D. accepted the change. The drafts were published for inviting comments and if the D.P.I. thought that the rules as published did not carry out his intention he should have drawn the attention of the E. and I.D. to that effect. Rule 119(1) provides that the grant is to be paid before 31st March. It is entirely open to the Administration Officer to pay it in advance or in a lump sum before the end of the year. He has to exercise his discretion in the matter. The only change necessary is to alter the word "other" in rule 119(2) to the word "approved" and the D.P.I. may then issue administrative instructions for the exercise of the discretion.

B.D.

Additional Secretary to Government.

U.R. to E. & I.D. No. 10296. dated the 12th September 949.

VOP.

5-6-50.

Legal Department.

In place of E. and I.D. draft notification, a revised draft notification is sent herewith.

2. The secondproviso to rule 32(2) and Note 5 suggested by the Department do not fit in as proviso and Note, respetively They have, therefore, been inserted as separate sub-rule, in the revised draft. The provision suggested by the Department that the medium of instruction in the border areas should be as desired by the local population is not feasible. The revised draft provides that in such cases the medium of instruction may be such as the Provincial Government may direct.

S.D. S.P.

Additional Secretary to Government.

U.R. to E. & I.D. No., 9361, dated the 20th August 1949.

VOP.

5-6-56.